

Message

From: Velez, Hector [Velez.Hector@epa.gov]
Sent: 1/19/2021 7:07:35 PM
To: Schaaf, Eric [Schaaf.Eric@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Villatora, Liliana [Villatora.Liliana@epa.gov]; McHale, Mary [McHale.Mary@epa.gov]; Prentice, Amanda [Prentice.Amanda@epa.gov]
Subject: RE: U.S. Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy rule

Your welcome.

From: Schaaf, Eric <Schaaf.Eric@epa.gov>
Sent: Tuesday, January 19, 2021 3:01 PM
To: Velez, Hector <Velez.Hector@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Prentice, Amanda <Prentice.Amanda@epa.gov>
Subject: RE: U.S. Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy rule

The writeups are steadily getting better – a good thing given that the decision is nearly 200 pages long. Thanks!

From: Velez, Hector <Velez.Hector@epa.gov>
Sent: Tuesday, January 19, 2021 1:56 PM
To: Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Prentice, Amanda <Prentice.Amanda@epa.gov>
Subject: U.S. Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy rule

Fyi – in case you don't have this yet.

EPA's Industry-Friendly Climate Rule Struck Down by Court (2)

<https://news.bloomberglaw.com/environment-and-energy/epas-industry-friendly-climate-rule-struck-down-by-court>

Jan. 19, 2021, 11:14 AM; Updated: Jan. 19, 2021, 12:36 PM

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- Affordable Clean Energy rule replaced sweeping Obama plan
- States, green groups questioned legality under Clean Air Act

The EPA's industry-friendly climate rule for power plants violates federal law, the D.C. Circuit ruled Tuesday in a searing defeat for the Trump administration's deregulatory agenda.

The U.S. Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy rule and remanded it to the Environmental Protection Agency, giving the incoming Biden administration a clean slate for regulating emissions from the power sector.

"It's a really strong foundation for the Biden-Harris EPA to restore crucial safeguards for Americans," Environmental Defense Fund senior attorney Ben Levitan told Bloomberg Law.

The decision undercuts Trump officials' bid to leave a legacy of deregulation, tossing one of the administration's highest-profile replacements of aggressive Obama-era environmental rules.

"We are disappointed that the panel majority rejected EPA's well-supported repeal of the Clean Power Plan and its regulation of [greenhouse gases] from coal-fired power plants in the Affordable Clean Energy Rule," EPA spokesman Molly Block said in an email. "The decision risks injecting more uncertainty at a time when the nation needs regulatory stability. EPA is reviewing the decision and will explore all available litigation options."

Supporters of the ACE rule could ask the full D.C. Circuit or the Supreme Court to review the decision.

The EPA, under former President Barack Obama, crafted the far-reaching Clean Power Plan to reduce greenhouse gas emissions across the power sector. The plan never took effect; the Supreme Court froze its implementation, and the EPA quickly dismantled and replaced the rule after President Donald Trump took office.

'No Basis'

Tuesday's decision rejects the Trump EPA's position that the Clean Air Act only allows the agency to craft emissions restrictions that apply directly "at the source" of power plants. The position was a departure from the Obama administration's sector-wide approach to reducing emissions.

"In other words, the EPA reads the statute to require the Agency to turn its back on major elements of the systems that the power sector is actually and successfully using to efficiently and cost-effectively achieve the greatest emission reductions," the court said.

It added that there is "no basis—grammatical, contextual, or otherwise—for the EPA's assertion."

Judge Justin R. Walker, a Trump appointee, dissented in part from the ruling, rejecting the Trump administration's rule on other grounds. He said the EPA has no authority in the first place to regulate power plants under the Clean Air Act provision in question.

The court's ruling means the incoming administration can make a fresh start on regulating greenhouse gas emissions from the power sector, said Alston & Bird attorney Kevin S. Minoli, a former EPA lawyer.

"But it also forces the administration to start over again at square one," he said in an email. "That will leave a regulatory gap as the Biden administration sets out on its plan to address climate change."

Eight Hours of Arguments

The ruling comes after the D.C. Circuit in October heard more than eight hours of oral arguments over the Trump administration's rollback and replacement rule.

Dozens of environmental groups, clean energy companies, and a coalition of left-leaning states argued that the repeal of the Clean Power Plan and the replacement rule were unlawful. Other energy companies and right-leaning states backed the Trump administration in court.

The three-judge panel, which included two Obama appointees and one Trump appointee, worked through a series of major legal questions, including whether the Clean Air Act requires a narrow, site-specific approach to emissions reductions from power plants—or allows the EPA to take a holistic, sector-wide approach.

The incoming Biden administration has pledged to act aggressively on climate change, and is poised to craft a new EPA rule for power plant emissions.

Environmental lawyers expect new agency leaders to opt for a broad, Clean Power Plan-style approach, but have cautioned that any ambitious regulation will likely invite a skeptical eye from the U.S. Supreme Court's new 6-to-3 conservative majority.

The case is Am. Lung Ass'n v. EPA, D.C. Cir., No. 19-1140, 1/19/21.

Héctor L. Vélez Cruz, Esq.
Caribbean Disaster Recovery Coordinator/Lead General Attorney
Associate Regional Counsel for Caribbean Programs
Office of Regional Counsel
US Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069
phone: 787.977.5850
email: velez.hector@epa.gov

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